REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2661** (CTA Case No. 9343)
	Present:
-versus-	**DEL ROSARIO**, *PJ*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, and **ANGELES**, *JJ*.
WILLIAM R. VILLARICA, *Respondent.*	Promulgated: JAN 18 2024 2:10

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DECISION

REYES-FAJARDO, *J.*:

We resolve the Petition for Review dated August 5, 2022,[1] impugning the Decision dated October 21, 2021,[2] and Resolution dated June 30, 2022,[3] in CTA Case No. 9343. The impugned Decision and Resolution cancelled the Final Decision on Disputed Assessment dated April 4, 2016, and the deficiency Income Tax (IT), and Value-Added Tax (VAT) assessments, including the corresponding interest and surcharge, all issued against William R. Villarica, covering Taxable Years (TYs) 1998, 2000, 2001, 2006, 2007, 2008, and 2009.

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1 *Rollo*, pp. 6-20.
2 *Id.* at pp. 27-57.
3 *Id.* at pp. 59-63.

The antecedents follow.

Petitioner Commissioner of Internal Revenue is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, fees or other charges and penalties imposed in relation thereto, or other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent William R. Villarica is a Filipino of legal age. He may be served with summons and other court processes through his counsel with office address at the 8th Floor, One Corporate Plaza, 845 Arnaiz Avenue, Makati City, Metro Manila.

On May 8, 2007, the BIR received an anonymous letter dated May 4, 2007 from a concerned citizen, wherein the latter claimed that: (1) respondent owns W. Villarica Pawnshops where he/she was previously employed; (2) respondent owns several luxury vehicles; and (3) notwithstanding his business and assets, respondent has not been paying taxes. In view thereof, the BIR National Investigation Division (NID) conducted a preliminary investigation against respondent, and was able to obtain the following information:

a. Respondent was registered in Revenue District Office (RDO) No. 52 as a Single Proprietor-Pawnshop Operator from 26 September 1991 until 2008;

b. Respondent's Annual Income Tax Returns (ITR) for TYs 1999, 2000, 2001, and 2007 were not among those received and encoded by the Document Processing Section of RDO No. 52;

c. As per the computer records of RDO No. 52, respondent has not filed any ITR since taxable year 1999;

d. Respondent filed his ITR for TYs 1999 to 2001 in RDO No. 25;

e. RDO 25B has no records of petitioner's ITR for taxable years 2002 to 2006, 2008, and 2009;

f. Respondent filed his ITR for TY 2007 in RDO No. 25. In the said ITR, the words "NO OPERATION" and "NIL" were typewritten on spaces nos. 26A- the Gross Taxable Compensation Income and 43C-Aggregate Amount Payable/(Overpayment), respectively; and,

g. Certain vehicles are registered under respondent's name, specifically, a Volkswagen Beetle amounting to ₱1,500,000.00, a Toyota MR2 Spyder amounting to ₱2,350,000.00, a Toyota Super Grandia amounting to ₱1,180,000.00, a Ferrari Coupe amounting to ₱40,000,000.00, and a Lamborghini Gallardo amounting to ₱26,000,000.00.

On July 14, 2010, the BIR issued Letter of Authority No. LOA200900044653 (LOA), authorizing Revenue Officers (RO) A.M. Simpit, L. Sante, G. Saga, G. Eito, and Group Supervisor (GS) Aurora V. Flor, all from the NID, to examine respondent's books of accounts and other accounting records for Calendar Year 2009 and unverified prior years.

On July 15, 2010, the BIR filed a Joint Complaint-Affidavit with the Department of Justice (DOJ), charging respondent for violation of Sections 254 and 255 of the NIRC, as amended, docketed as XVI-INV-10G-00225, entitled BIR v. Villarica.

Several notices were then sent by the BIR to respondent, requesting the latter to present his books of accounts and other accounting records in relation to the LOA, detailed as follows:

Notice	Date of Notice	Date Received by Respondent
Second Notice	August 12, 2010	August 20, 2010
Final Notice	September 28, 2010	October 4, 2010

On February 22, 2011, the BIR issued a Notice of Informal Conference, inviting respondent to discuss the ongoing audit investigation against him on February 28, 2011.

On March 16, 2011, respondent received the BIR's Second Notice of Informal Conference dated March 15, 2011, reiterating its invitation to respondent rescheduled on March 16, 2011.

Continuing its investigation, the BIR secured additional documents from the Securities and Exchange Commission and the Local Government of Marilao, Bulacan, which include:

a. Certificate of Incorporation and Articles of Incorporation of Villarica Country Homes, Inc., to which respondent is an incorporator;

b. General Information Sheet of Villarica Country Homes, Inc. for 2009 where it is indicated that respondent is the President of said company and owns ₱100,000.00 out of the company's total ₱2,200,500.00 paid-up capital

c. Business Permit of Villarica Country Homes in the Municipality of Marilao, Bulacan for year 2008 showing the company's declared capital investment of ₱1,000,000.00;

d. Business Permit of the Marilao Coliseum/Villarica Willam in the Municipality of Marilao, Bulacan for year 2010 showing the business' capital investment of ₱500,000.00;

e. Deed of Sale of a Ferrari, dated 15 May 2013, in the amount of ₱15,000,000.00 sold by respondent to Lilibeth B. Respensor; and

f. Deed of Sale of a Lamborghini, dated 22 August 2007, in the amount of ₱20,000,000.00 sold by respondent to Ryan Jeffrey S. Son.

On June 1, 2011, respondent received the BIR's undated Preliminary Assessment Notice (PAN), containing the proposed deficiency tax assessments for IT and VAT covering TYs 1998, 2000, 2001, and 2006-2009 in the aggregate amount (including interests and surcharge) of ₱79,280,794.55, detailed as follows:

INCOME TAX			
Taxable Year	**Basis of Assessment**	**Tax Base**	**Total Tax Due (incl. of interest, penalty and surcharge)**
1998	Purchase of Volkswagen	₱ 1,500,000.00	₱ 1,823,396.09
2000	Purchase of Toyota MR2 Spyder	2,350,000.00	2,458,111.03
2001	Purchase of Toyota Grandia	1,180,000.00	1,144,815.89
2006	Purchase of Ferrari Coupe	40,000,000.00	29,889,917.81
2007	Purchase of Lamborghini	26,000,000.00	17,742,762.56
2008	Cap. Invest. in Villarica Country Homes	1,000,000.00	553,342.47
2009	Cockpit Arena Improvements	7,006,628.00	3,843,817.05

TOTAL		₱ 79,036,628.00	₱ 57,456,162.90
VALUE-ADDED TAX			
Taxable Year	**Basis of Assessment**	**Tax Base**	**Total Tax Due (incl. of interest, penalty and surcharge)**
1998	Purchase of Volkswagen	₱ 1,500,000.00	₱ 600,000.00
2000	Purchase of Toyota MR2 Spyder	2,350,000.00	846,000.00
2001	Purchase of Toyota Grandia	1,180,000.00	401,200.00
2006	Purchase of Ferrari Coupe	40,000,000.00	11,360,000.00
2007	Purchase of Lamborghini	26,000,000.00	6,864,000.00
2008	Cap. Invest. in Villarica Country Homes	1,000,000.00	240,000.00
2009	Cockpit Arena Improvements	7,006,628.00	1,513,431.65
TOTAL		**₱ 79,036,628.00**	**₱ 21,824,631.65**
TOTAL AMOUNT DUE			**₱ 79,280,794.55**

On July 5, 2011, the BIR received respondent's Reply to the PAN, sent through registered mail on June 16, 2011, disputing the findings therein.

On June 29, 2011, respondent received the BIR's Formal Letter of Demand with Assessment Notices (FLD/FAN) dated June 16, 2011, assessing him for deficiency IT and VAT for TYs 1998, 2000, 2001, 2006-2009.

On July 29, 2011, respondent filed through registered mail, his protest to the FLD/FAN, by way of a Request for Reconsideration. Said protest was received by the BIR on August 16, 2011.

On April 5 2016, respondent received the BIR's Final Decision on Disputed Assessment (FDDA) dated April 4, 2016, denying his Protest to the FLD/FAN. Accordingly, respondent was demanded to pay the deficiency taxes, plus interests and surcharge which, at this time, totaled to ₱112,105,286.68.

On May 5, 2016, respondent filed his Petition for Review[4] before the Court in Division, docketed as CTA Case No. 9343.

On October 21, 2021, the Court in Division rendered the impugned Decision,[5] the *fallo* of which states:

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4 This was coupled with Motion/Application for Suspension of Tax Collection.

5 *Supra* note 2.

> **WHEREFORE,** premises considered, [respondent]'s Petition for Review is hereby **GRANTED**.
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> Accordingly, the Final Decision on Disputed Assessment, dated 4 April 2016, and the corresponding assessments issued against [respondent] assessing him for deficiency income tax and VAT, inclusive of interest and surcharge, for taxable years 1998, 2000, 2001, 2006, 2007, 2008, and 2009 in the aggregate amount of ₱112,105,286.68 are hereby **CANCELLED** and **SET ASIDE**.
>
> Consequently, [petitioner] is hereby **ENJOINED** and **PROHIBITED** from proceeding with the collection of the assailed deficiency taxes assessed against [respondent].
>
> **SO ORDERED.**

Petitioner moved,[6] but failed[7] to obtain a reversal of the impugned Decision; hence, the present[8] recourse.

Petitioner ascribes fault on the Court in Division's finding that the BIR's LOA is only valid for Calendar Year 2009, and void, with respect to unverified prior years, based on Revenue Memorandum Order (RMO) No. 43-90,[9] as interpreted in *Commissioner of Internal Revenue v. De La Salle University, Inc. (DLSU)*.[10] He explains: (1) RMO No. 43-90 does *not* implement the present NIRC, as amended, as it was issued prior to the enactment thereof; (2) *DLSU* is inapplicable because the audit conducted in *DLSU* is a regular audit, whereas the audit conducted in this case is under the BIR's Run After Tax Evaders (RATE) Program; and (3) the exceptions in RMO No. 27-2010 permits the audit of prior years. Therefore, the BIR's LOA issued against respondent, covering unverified prior years is valid.

Petitioner acknowledges that Section 228 of the NIRC, as amended, as implemented by Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, grants the taxpayer a period of fifteen (15) days from receipt of the PAN to file a reply or response thereto, lest there be violation of the taxpayer's right to due process. He

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6 Respondent (now petitioner)'s Motion for Reconsideration [re: Decision dated October 21, 2021]. Docket (CTA Case No. 9343), pp. 2322-2329.

7 Impugned Resolution dated June 30, 2022. *Supra* note 3.

8 *Supra* note 1.

9 SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

10 G.R. No. 196596, November 9, 2016.

nonetheless insists that no sufficient evidence was presented by respondent to prove his receipt of the PAN on June 1, 2011. Hence, the Court in Division erred in concluding that the BIR violated respondent's right to due process, by failure to confer the full benefit of said fifteen (15)-day period, prior to the FLD/FAN's issuance on June 16, 2011.

Petitioner as well asserts that the deficiency tax assessments issued against respondent are supported by legal and factual basis, as shown by various documents secured from different government offices. Additionally, said legal and factual basis are embodied in the Details of Discrepancies in the PAN and FLD/FAN.

Capping up his arguments, petitioner declares that respondent must be held liable for deficiency IT, and VAT assessments, including the corresponding interest and surcharge, covering TYs 1998, 2000, 2001, 2006, 2007, 2008, and 2009.

Through his Comment/Opposition, filed on September 16, 2022,[11] respondent ripostes that the Court in Division committed no reversible error in holding: (1) the LOA is valid only for TY 2009; (2) his right to due process was offended by the BIR; and (3) the deficiency tax assessments issued against him are wanting in legal and factual basis.

RULING

We deny the Petition.

Petitioner seeks to hold respondent liable for deficiency IT and VAT assessments, and corresponding penalties, for TYs 1998, 2000, 2001, 2006, 2007, 2008, and 2009. Yet, the Court in Division's total refusal of petitioner's desired result is justified. Consider:

First. The examination or audit conducted by petitioner's tax agents, leading to the issuance of the deficiency tax assessments against respondent for TYs 1998, 2000, 2001, 2006, 2007, and 2008, was without valid authority to examine, emanating from petitioner or his duly authorized representatives.

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11 *Rollo*, pp. 67-82.

Revenue Audit Memorandum Order (RAMO) No. 1-2000[12] defines an LOA as one which "... authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his [or her] internal revenue tax liabilities for a *particular period.*"[13] Conversely, an LOA may *not* be considered as such, if the BIR *failed* to specify therein, the exact period/s covered by its audit and examination. This requirement is deeply ingrained in jurisprudence.

For instance, in *Commissioner of Internal Revenue v. Sony Philippines, Inc. (SPI),*[14] the BIR issued an LOA against Sony Philippines, Inc. (Sony), covering 1997 and unverified prior years. On the basis thereof, the BIR scrutinized the records of Sony covering 1998, and found that Sony is liable for deficiency VAT for said period. In refusing to accord validity on the 1998 deficiency VAT assessment issued against Sony, the Supreme Court pronounced:

> As earlier stated, LOA 19734 covered "the period 1997 and unverified prior years." For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. **As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA.**[15]

SPI added that the LOA issued by the BIR also violates Section C of RMO No. 43-90, which states:

> 3. A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.

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12 SUBJECT: Updated Handbook on Audit Procedures and Techniques Volume I (Revision – Year 2000).

13 See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

14 G.R. No. 178697, November 17, 2010.

15 Boldfacing supplied.

Then came *DLSU*.[16] There, the BIR issued an LOA against De La Salle University, Inc. (La Salle), covering Fiscal Year (FY) ending 2003 and unverified prior years. La Salle contended that the BIR's deficiency tax assessments for TYs 2001, 2002, and 2003, are void because said LOA is violative of RMO No. 43-90. In rejecting La Salle's notion, and upholding said LOA for FY ending 2003, the Supreme Court discoursed:

> ... the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random *unverified years*, which may include documents from as far back as ten years in cases of *fraud* audit.
>
> In the present case, the LOA issued to DLSU is for *Fiscal Year Ending 2003 and Unverified Prior Years*. The LOA does not strictly comply with RMO 43-90 because it includes unverified prior years. This does not mean, however, that the entire LOA is void.
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> As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. DLSU was fully apprised that it was being audited for taxable year 2003. Corollarily, the assessments for taxable years 2001 and 2002 are void for having been *unspecified* on separate LOAs as required under RMO No. 43-90.

The BIR issued an LOA[17] against respondent, covering calendar year 2009 and unverified prior years. Following RMO No. 43-90, as construed in *SPI*, and *DLSU*, along with RAMO No. 1-2000, we rule: (1) the LOA is valid only for TY 2009; and (2) the LOA pertaining to unverified prior years, along with the resultant deficiency tax assessments covering TYs 1998, 2000, 2001, 2006, 2007, and 2008 are void, for failure to expressly indicate said periods in such LOA.

Petitioner contends that: (1) RMO No. 43-90 does *not* implement the present NIRC, as amended, as it was issued prior to the enactment thereof; (2) *DLSU* is inapplicable here, because the type of audit in *DLSU* and the present case, are different; and (3) RMO No. 27-2010 justifies the validity of the LOA covering unverified prior years.

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16 *Supra* note 10.

17 Exhibit "P-15," Docket (CTA Case No. 9343), p. 1396; and Exhibit "R-24," *id.* at p. 2197.

These contentions are far-fetched.

One. Section 291 of the NIRC, as amended, provides that "[a]ll ... rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly." RMO No. 43-90, requiring that the particular year/s covered by the BIR audit or examination be specified in the LOA, is *not* repugnant with the NIRC, as amended. In fact, RAMO No. 1-2000, the audit manual made[18] to conform with the present NIRC, as amended, reiterated said requirement. Besides, *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[19] confirmed that the NIRC, as amended, codifies the LOA requirement in RMO No. 43-90, and that said RMO remains effective and applicable.

Two. DLSU is applicable here, regardless of whether the BIR audit or examination is a regular or RATE audit or examination. We adopt the Court in Division's explanation on the matter:

> A closer reading of the ***DLSU Case*** shows that the Supreme Court made no distinction as to the type of audit, whether it be a regular audit investigation or an investigation under the RATE Program. It explained that the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random unverified years, which may include documents from as far back as ten years in cases of fraud audit. Thus, to reiterate this Court's ruling in the assailed Decision, the prohibition of issuance of LOAs covering audit of "unverified prior years" is founded on the taxpayer's right to due process.[20]

Three. Item II(B)(7) of RMO No. 27-2010[21] reads:

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18 The objective of RAMO 1-2000, stated in Roman Numeral I thereof is as follows: "This Order prescribes the use of the Updated Handbook on Audit Procedures and Techniques (Volume I) in the audit of tax returns. **The Handbook is intended to provide revenue officers with minimum standard procedures and a uniform guideline for the proper examination and/or investigation of tax liabilities. This updated version was prepared in order to conform with the provisions of the Tax Reform Act of 1997.**" (Boldfacing supplied)

19 G.R. No. 242670, May 10, 2021.

20 Page 4, Resolution dated June 30, 2022 in CTA Case No. 9343. *Rollo*, p. 62. Boldfacing and italics in the original. Citations omitted.

21 SUBJECT: Re-invigorating the Run After Tax Evaders (RATE) Program, and Amending Certain Portions of RMO No. 24-2008.

> II. Policies and Procedures
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> The following policies and guidelines shall be observed in the development and investigation of RATE cases, in addition to those set forth in the relevant revenue issuances:
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> ...
>
> B. Issuance of Letters of Authority for RATE Cases
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> ...
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> 7. **The issuance of LAs shall cover only the taxable year(s) for which prima facie evidence of tax fraud, or of violations of the Tax Code**, was established through the appropriate preliminary investigation, **unless the investigation of prior or subsequent years is necessary in order to**:
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> • Determine or trace continuing transactions entered into in the covered year and concluded thereafter, or those transactions concluded in the covered year that were commenced in prior years; or
>
> • Establish that the same scheme was utilized for prior or subsequent years.

To set the exceptions under item II(B)(7) of RMO No. 27-2010 in motion, it must be shown: (1) there was a continuing transaction in a covered year, and that it was commenced, or concluded in another year/s; *or* (2) the same scheme in a covered year was used for prior or subsequent year/s. These two (2) circumstances are wanting here.

To be precise, petitioner admitted[22] that the BIR's objective is to determine respondent's correct tax liability for TY 2009. The PAN[23] and FLD/FAN[24] divulged that respondent was slapped deficiency taxes for said year, because of money he expended on cockpit arena improvements. Meanwhile, the same PAN[25] and FLD/FAN[26] showed that the transactions for TYs 1998, 2000, 2001, 2006-2008, pertain to purchases of vehicles, and capital investment in Villarica Country Homes. However, except for the nature of these transactions and the corresponding amounts disbursed by respondent, no other

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22 Petition for Review in CTA EB No. 2661. *Rollo*, p. 13.
23 Exhibit "P-2." Docket (CTA Case No. 9343), pp. 1271-1273.
24 Exhibit "P-5." *Id.* at pp. 1298-1317.
25 *Supra* note 23.
26 *Supra* note 24.

evidence[27] was adduced by petitioner to exhibit the nexus bridging the money expended on Cockpit Arena Improvements, with the sums used for purchases of vehicles, and capital investment. The PAN and FLD/FAN, too, are barren of any explanation as to how these transactions are intertwined with one another. Therefore, the cited exceptions in item II(B)(7) of RMO No. 72-2010 finds *no* application in this case.

Second. The BIR violated respondent's right to due process.

Section 228 of the NIRC, as amended,[28] as implemented by Section 3[29] of RR No. 12-99,[30] as amended by RR No. 18-2013 govern

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27 Respondent (now petitioner)'s Formal Offer of Evidence. Docket (CTA Case No. 9343), pp. 2175-2183.

28 SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, **he shall first notify the taxpayer of his findings**: Provided, however, That a pre-assessment notice shall not be required in the following cases: ...

...

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. ...

... (Boldfacing supplied)

29 SECTION 3. **Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –**

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

...

3.1.1 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

the due process requirement on assessment. Among the components thereof is that the taxpayer must be afforded the opportunity to ventilate its defenses on the PAN, within fifteen (15) days from receipt thereof, by way of a reply or response thereto, lest there be violation of the taxpayer's right to due process.[31] *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[32] elucidated on the *rationale* thereof in this wise:

> The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of the FAN.

Petitioner agrees with the principles just mentioned. He however asserts that the Court in Division erred in applying the same, considering that respondent failed to satisfactorily establish his receipt of the PAN on June 1, 2011.

Petitioner is clutching at straws.

Section 1,[33] Rule 133 of the Rules of Court, as amended,[34] recognizes preponderance of evidence as the quantum of proof in civil cases. *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc. (BOCIPI)*[35] explained preponderance of evidence, in this wise:

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30 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

31 See *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021, whereby the Supreme Court ruled that the service of the PAN, as well as the taxpayer's opportunity to file a reply/response thereto within fifteen (15) days from receipt thereof is mandatory.

32 G.R. No. 249153, September 12, 2022.

33 **Section 1.** Preponderance of evidence, how determined. - **In civil cases, the party having the burden of proof must establish his or her case by a preponderance of evidence.** In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, **the nature of the facts to which they testify, the probability or improbability of their testimony**, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (1a) (Boldfacing supplied)

34 A.M. No. 19-08-15-SC.

35 G.R. No. 214406, February 6, 2017.

> ... By preponderance of evidence, according to *Raymundo v. Lunaria,* [means] that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." **It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.**[36]

To demonstrate respondent's receipt of the PAN on June 1, 2011, the latter's evidence consists of: *first,* his testimony;[37] and *second,* his reply[38] to the PAN, acknowledging receipt of said BIR notice on such date. Being the person to whom the PAN was served, respondent is in the best position to know the date of receipt of the PAN. Yet, save for his gripe of deficiency in respondent's evidence, petitioner presented no countervailing proof to negate, let alone, tarnish, the proof generated by respondent's evidence. Consistent with Section 1, Rule 133 of the Rules of Court, as amended, and *BOCIPI,* respondent's evidence is far more superior over petitioner's naked assertion. *Ergo,* respondent successfully convinced us that he received the PAN on June 1, 2011.

Counting fifteen (15) days from respondent's receipt of the PAN on June 1, 2011, he had until June 16, 2011 to file a reply or response thereto. However, the BIR failed to confer respondent the full benefit of such obligatory fifteen (15)-day period, by issuing the FLD/FAN on June 16, 2011, thereby exposing violation of respondent's right to due process on assessment.

Third. The FLD/FAN lacks legal and factual mooring.

Section 228 of the NIRC, as amended,[39] requires that the factual and legal basis of the assessment be specified in the FLD/FAN. In this regard, the BIR's Details of Discrepancy on the FLD/FAN[40] shows that petitioner assessed respondent for deficiency IT, and VAT, including penalties, for TY 2009, and unverified prior years

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36 Boldfacing supplied.

37 Answer to Question No. 10, Amended Judicial Affidavit of William R. Villarica dated February 2, 2017. Docket (CTA Case No. 9343), p. 634.

38 Exhibit "P-3." *Id.* at p. 1274.

39 *Supra* note 28.

40 Exhibit "P-5." *Id.* at pp. 1298-1317.

"[b]ased on the money **expended** for the **purchase** of vehicles, capital **investments** and **cost** of improvements, ..."[41]

Section 24(A)(1) of the NIRC, as amended, imposes income taxes on most[42] of individual taxpayers on their taxable income, except those specific items of income subject to final income taxes.[43] One of the requisites for income to be taxable is that there must be gain or income realized or received by the taxpayer.[44] "Income may be defined as an amount of money coming to a person or corporation within a specified time, whether as **payment for services, interest or profit from investment**. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of the fruits of one's labor."[45] Indeed, income tax is assessed on income received from any property, activity or service that produces the income.[46] Without proof of receipt of taxable income, the obligation to pay taxes does not arise.[47]

So too do Sections 106(A)[48] and 108(A)[49] of the NIRC, as amended impose 12% VAT, on every sale of goods and properties,

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41 *Id.* at p. 1301. Boldfacing supplied.

42 A non-resident alien not engaged in trade or business is generally taxed on his or her gross income. See Section 25(B) of the NIRC, as amended.

43 SEC. **24.** ***Income Tax Rates.*** -
(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.-

(1) An income tax is hereby imposed:

(a) On the **taxable income** defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines be every individual citizen of the Philippines residing therein;

(b) On the **taxable income** defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within the Philippines by an individual citizen of the Philippines who is residing outside of the Philippines including overseas contract workers referred to in Subsection(C) of Section 23 hereof; ...

... (Boldfacing supplied)

44 *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue (BIR)*, G.R. No. 228539, June 26, 2019. *ANPC* for brevity. Boldfacing in the original.

45 *ANPC, supra* note **44**, citing *Conwi v. Court of Tax Appeals*, G.R. No. 48532, August 31, 1992.

46 *Commissioner of Internal Revenue v. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.

47 See *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021.

48 SEC. **106.** ***Value-Added Tax on Sale of Goods or Properties.*** -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to twelve percent

along with sale of services performed in the Philippines for a fee, among others. Thus, before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required.[50]

Measured against the above tenets, the Court in Division aptly ruled that respondent may *not* be burdened by the BIR of IT and VAT. Specifically:

> ..., none of these transactions represent a sale, exchange, or gross receipts which can be subject to VAT. Neither was there any showing of income derived from these alleged purchases which can be subject to income tax.
>
> Moreover, as for taxable year 2009, the Court cannot ascertain the factual basis of the income tax and VAT assessments since the tax base used does not correspond with the evidence on record. A reading of the PAN and FLD shows that [petitioner] assessed [respondent] for deficiency taxes on account of improvements made to the Marilao Coliseum amounting to ₱7,006,628.00. However, the evidence presented by [petitioner] in relation to the same is a Business Permit which reflects a capital investment of only ₱500,000.00 with 0 gross sales for 2009.[51]

In conclusion, the Court in Division annulled the BIR's FDDA dated April 4, 2016, and the deficiency IT, and VAT assessments, including the corresponding interest and surcharge, all issued against respondent, covering TYs 1998, 2000, 2001, 2006, 2007, 2008, and 2009.

Rightfully so.

(12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

49 SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

...

50 *ANPC, supra* note 44, citing *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519, 533 (2010).

51 Pages 28-29, impugned Decision dated October 21, 2021 in CTA Case No. 9343.

WHEREFORE, the Petition for Review dated August 5, 2022, filed by the Commissioner of Internal Revenue, in CTA EB No. 2661, is **DENIED**, for lack of merit. The Decision dated October 21, 2021, and Resolution dated June 30, 2022, in CTA Case No. 9343, are **AFFIRMED**.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice